IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 750 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

PRABHULBHAI NAGARJIBHAI

Appearance:

Mr.S.R.Divetia A.P.P. for Petitioner

SERVED for Respondent No. 1

MR DR BHATT for Respondent No. 3

MR AM JOSHI for Respondent No. 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 17/03/97

ORAL JUDGEMENT

State of Gujarat has preferred the present application against the order passed by the learned

Sessions Judge, Bulsar at Navsari on 20.10.84 in cri. cases nos. 26 to 29 of 1984. Sultanpur Kaltan Seva Sahakari Mandli (hereinafter referred to as the Mandli) was the authorised dealer appointed by the State Government under the Essential Commodities Act. Said Mandli was given permission from time to time by the authorities and on behalf of the said society, the respondent no.3 Mahadevbhai Manibhai Desai was actually receiving the food grains from the Government godown on the strength of the authority issued in his favour by the said Mandli. It was found that in all 42 permits were issued by the authorities and food grains of those 42 permits were actually lifted by respondent no.3 from the Government godowns but the Mandli was actually receiving the goods of only 30 permits. This was detected by the Supply Inspector Shri Keshavbhai Bhanabhai Patel who carried out the inspection of the said Mandli and he had submitted a detailed report to the Collector of the district and on the strength of his report an offence was registered against the present respondent no.3 for the offences punishable under sections 419 and 420 and in the alternative under section 406 IPC. Thereafter, necessary investigation was carried and then charge sheet was sent against the present respondent no.3 and one Rameshbhai Doshi. Said charge sheet was splited into four cri.cases in order to avoid misjoinder of charges. It was then Transpired that Rameshbhai Bhagwanbhai Koli Patel was unnecessarily named in the charge sheet and report was filed by the prosecution to discharge him. The charge framed against the respondent no.3 in all the 4 cases and he had pleaded not guilty. Thereafter the evidence was led in all the four cases. Said evidence consisted of the deposition of respondent no.1 Prabhulbhai Nagarjibhai, Secretary of the said Mandli, Nanubhai Manibhai Desai Chairman of the said Mandli and other witnesses and other documentary evidence.

2. It seems that it was alleged before the learned JMFC that the respondent no.1 Prabhulbhai Nagarjibhai and respondent no.2 Manubhai Manibhai Desai ought to have been joined with respondent no.3 Mahadevbhai Manibhai Desai. The learned Magistrate who had tried respondent no.3 has given reasons in his judgment in para 30 and had disallowed the said contention and then in view of the evidence before him he found the respondent no.3 guilty of the offence with which he was charged and he then passed the judgment and order dt. 30.4.84 convicting and sentencing respondent no.3.

3. Being aggrieved by the said decision respondent

no.3 had preferred criminal appeals nos. 26 to 29 of 1984 in the court of the learned District and Sessions Judge, Bulsar at Navsari.

4. It seems that at the time of hearing of the said criminal appeals, respondent no.3 has raised some contentions viz. that the respondent nos 1 and 2 ought to have been joined as accused and the case of State vs. Keshavlal Hiralal 1983(2) GLR 1094 was also cited before the learned Sessions Judge. The learned Sessions Judge has on considering the said case as well as the statements made before him passed the following order on 20.10.84.

> "The Trial Court should issue notice to Parbhubhai Nagarji Patel and Manubhai Manibhai Desai calling upon them to show cause why they should not be made accused in the case in light of the aforesaid Gujarat decision as well as section 319 of the Code of Criminal Procedure.
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> The Trial Court is to decide the matter on its own according to the merits of the case and in accordance with law without in any way being influenced by whatever observations that are made in this order.
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> The records and proceeddings of all the 4 cases be sent to the trial court for the purpose. The trial Court is directed to return the same with its finding on or before 31st of December 1984. The accused-appellant is hereby directed to remain present before the trial Court on 5th November 1984 and thereafter to remain present as directedby the trial Court."

5. Being aggrieved by the said decision of the learned Sessions Judge the State has preferred the present appeal. If the order of the learned Sessions Judge is considered then it would be quite clear that said order of the learned Sessions Judge is illegal and improper. It was contended before the learned Sessions Judge that the respondent nos 1 and 2 Prabhubhai Nagarjibhai and Manubhai Manibhai Desai ought to have been joined as accused with the appellant before him. As observed in his judgment similar contention was raised before the learned JMFC and the learned JMFC has negatived that contention as per his reasoning in para 30 of his judgment. When the learned Sessions Judge has

recorded thus viz. that the learned JMFC has negatived the contention of the appellant for which reason has been given in para 30 of his judgment, passing of the order by the learned Sessions Judge in remanding the matter to the learned JMFC without quashing and setting aside the reasons given by the learned JMFC when he had rejected that claim is not at all just and proper. The learned Sessions Judge ought to have considered the submissions made before him as well as materials on record and then he should have recorded his own finding as to how if at all the JMFC was wrong, in rejecting the claim of the appellant and then to send the matter back to the learned JMFC by directing him to join respondent nos 1 and 2 as co accused along with the appellant and ought to have ordered for retrial of the accused. The learned Sessions Judge has directed that the learned JMFC should issue notice to respondents nos 1 and 2 to show cause as to why they should not be made accused along with respondent no.3 and then to decide the matter and then to submit his finding to him. Such a procedure adopted by the learned Sessions Judge is not at all proper and legal particularly when the learned Sessions Judge has stated that for the reasons stated by the learned JMFC in para 30 of his judgment, he comes to the conclusion that respondents nos 1 and 2 are not at all necessary to be joined as co.accused along with the appellant. Now once the learned JMFC has arrived at that conclusion and when the learned Sessions Judge is not in a position to record a finding that the conclusion arrived at by the learned JMFC is illegal, perverse or improper. Merely because the appellant has raised the same contention before him requesting him to issue notice to those persons and then to record his finding, the learned Sessions Judge could not have passed such an order. If the provisions of section 319 of Cr.P.C. are considered then it would be quite clear that there is no question of hearing the person before joining him as co.accused. But if on the strenght of material before the criminal court, it is justified in joining of the co-accused, the criminal court may join him as co-accused and not otherwise.

6. When the prosecution has come with a case that only the appellant before the learned Sessions Judge was the original accused and when the prosecution does not wish to join other persons along with the appellant and when the appellant is convicted by the learned JMFC on the evidence on record, the learned Sessions Judge ought to have considered the contention raised by the appellant before him and arrived at a conclusion as to whether the conviction of the appellant is to be maintained or not. If the learned Sessions Judge finds that on account of

non joining of respondents nos 1 and 2 there is a reasonable doubt regarding the guilt of the appellant then the appellant is entitled to get benefit of the same. But keeping the matter pending before him and directing the learned JMFC only to consider the question as to whether respondents nos. 1 and 2 are to be joined as accused along with appellant or not, is not proper and just. I would therefore, quash and set aside the order passed by the learned Sessions Judge in Cri. appeals nos 26 to 29 of 1984 passed on 20.10.84 and direct him to hear all the four appeals on merits and to pass appropriate order by considering whatever contentions raised before him by appellant-respondent no.3 and consider the question as to whether the conviction and sentence passed against the appellant respondent no.3 is to be maintained or not. In view of the fact that the conviction is of the year 1984, I direct the learned Sessions Judge to dispose of these four appeals within 3 months from today. I also direct the respondent no.3 before this court (ori. appellant before the learned Sessions Judge) along with the learned PP of the Sessions Court, Bulsar at Navsari to appear before the learned Sessions Judge on 31.3.97. The application is therefore, allowed. Rule is made absolute.

(S.D.Pandit.J)